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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 279

WHITE SWAN COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. III, 143–148) [1] is reported in 118 F. (2d) 1002. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. II, 168–181) are reported in 19 N. L. R. B. 1079.

[1] Pursuant to a stipulation of the parties (R. III, 151) the printed record for purposes of the petition for a writ of certiorari consists of three volumes. The first volume contains the portions of the record printed by the Company as an appendix to its brief in the Circuit Court of Appeals. The second volume contains the portions of the record printed by the Board as an appendix to its brief in the court below. The third volume contains the proceedings in the Circuit Court of Appeals.

JURISDICTION

The decree of the court below (R. III, 148–149) was entered on April 15, 1941. The petition for a writ of certiorari was filed on July 15, 1941. The jurisdiction of this Court is invoked under section 10 (e) of the National Labor Relations Act (Pet. 2).

QUESTION PRESENTED

Petitioner is a corporation engaged in operating a combined laundry, cleaning and dyeing establishment, located near a state line; during 1938 it purchased 28 per cent of its material and supplies in interstate commerce, and derived 18 per cent of its gross income from the servicing of garments collected from and delivered to points outside the state. The question is whether the National Labor Relations Act applies to its operations.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449; 29 U. S. C. Supp. IV, sec. 151 *et seq.*), are set forth in the Appendix.

STATEMENT

The National Labor Relations Board, upon the usual proceedings,[2] found that petitioner had en-

[2] Pursuant to charges and amended charges filed by Amalgamated Clothing Workers of America, Cleaners, Dyers, and Laundry Workers, Local 308, the National Labor Relations Board, on May 8, 1939, issued a complaint and notice of hearing (Bd. Ex. 2). The complaint, as amended, alleged, in substance, that petitioner by discriminatorily discharging

gaged in unfair labor practices affecting commerce and directed it to cease and desist from the unfair labor practices, to offer reinstatement and back pay to the three discharged employees, and to post appropriate notices. The facts as to jurisdiction, which alone is in issue here, were established by stipulation (R. II, 166–167) and undisputed testimony (R. II, 141–142, 144–148). They may be summarized as follows:

Petitioner operates a combined power laundry and dry-cleaning establishment in Wheeling, West Virginia, which " is engaged in washing, cleaning, purifying, scouring, bleaching, dying [*sic*], disinfecting, and renovating all types of wearing apparel and cloth goods" (R. II, 166). Petitioner collects and delivers garments for its customers. In this connection it owns and operates a fleet of delivery trucks. It maintains about 17 laundry and dry cleaning routes serving several hundreds of customers in Ohio and West Virginia. Three of peti-

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and refusing to reinstate certain named employees and by certain other acts had engaged and was engaging in unfair labor practices affecting commerce within the meaning of section 8 (1) and (3), and section 2 (6) and (7) of the Act (Bd. Exs. 11 and 14). Petitioner filed an answer and amendments thereto challenging the jurisdiction of the Board and denying the commission of the unfair labor practices (Bd. Exs. 8 and 16). Pursuant to notice, a hearing was held before a trial examiner designated by the Board. Following an intermediate report, exceptions thereto by the Company and the Union, and oral argument thereon, the Board issued its findings of fact, conclusions of law and order (R. II, 168–181).

tioner's routes operate exclusively in the State of Ohio (R. II, 145–146, 167). One Ohio route, covering three towns in that State, serves approximately 300 customers (R. II, 145, 148).

In 1938, its gross income totalled $128,752.96 (R. II, 166–167). At the time of the hearing it employed 89 persons (Bd. Ex. 22, 23, 24). Almost 18 per cent of petitioner's gross income is derived from work done on articles brought to its plant from points in Ohio and redelivered in Ohio after leaving the plant.[3] More than two-thirds of the interstate transportation which this work necessarily entails is handled directly by petitioner's trucks. This represents work affording about 12.93 per cent of petitioner's gross income. The remaining out-of-state business which accounts for about 5 per cent of petitioner's gross income, is brought in by independent or "bob-tail" route operators who collect the articles in Ohio, bring them to the plant in West Virginia, and later redeliver them in Ohio. Petitioner's income from work involving interstate shipments during 1938 totalled $23,088.43 (R. II, 141–142, 166–167).

In the operation of its plant, the petitioner uses various supplies, consisting of soap, bluing, bleach, solvent, coal, water, paper, tape, and padding. During 1938, petitioner purchased laundry and dry cleaning supplies and equipment at a cost of $38,-

[3] Operations formerly extending into Pennsylvania had been discontinued at the time of the hearing (R. II, 147).

333.15. Twenty-eight per cent of these products, costing $10,810.90, was purchased and shipped to petitioner's plant from 12 States other than West Virginia (R. II, 166–167).

On May 31, 1940, the Board filed in the court below a petition for enforcement of its order (R. III, 129–132). Petitioner filed an answer requesting that the petition to enforce be dismissed (R. III, 133–135). Subsequent to oral argument, the court below certified to this Court certain questions respecting the jurisdiction of the Board (R. III, 135–138). On March 31, 1941, this Court dismissed the certificate (R. III, 150–151; No. 529, October Term, 1940). On April 15, 1941, the court below handed down its opinion (R. III, 143–148) and entered a decree (R. III, 148–149) enforcing the Board's order with a modification not here material.

ARGUMENT

1. The petitioner is directly and substantially engaged in interstate commerce by reason of its collection, servicing, and delivery of garments which pass to and from its plant in such commerce. About 18 percent of the petitioner's gross revenue, or some $24,000 per year, is derived from servicing operations performed upon garments which are brought to its plant in interstate commerce and which after being serviced are redelivered in such commerce to the owners. This collection and delivery of garments across state lines clearly constitutes interstate commerce and

is substantial in amount. Since interruption or stoppage of the Company's operations by industrial strife would burden and obstruct this interstate commerce, the Act under the controlling decisions of this Court applies to petitioner's operations.[4]

In addition, industrial strife would impede and curtail the purchase and receipt of substantial quantities of supplies and equipment which move in interstate commerce to petitioner's plant from other states. The direct purchase and receipt of this volume of materials by petitioner from out-of-state origins is in itself a ground for the Board's jurisdiction.[5]

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[4] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–43; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 464–465; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 221–222; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604–605; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 326.

[5] *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board*, 101 F. (2d) 841 (C. C. A. 4), affirmed this Court, 308 U. S. 241, this jurisdictional point not being pressed in this Court; *National Labor Relations Board* v. *Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128 (C. C. A. 4); *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4); *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 115 F. (2d) 414, 416 (C. C. A. 4), certiorari granted, 61 S. Ct. 826, with respect to another point Nos. 25–26, October Term, 1941; *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 40–41 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 784 (C. C. A. 9), certiorari denied January 13, 1941, No. 352, October Term,

2. Petitioner urges that the limitation of the interstate commerce here involved to an area within a radius of about fifteen miles from the plant bars federal jurisdiction. The contention not only ignores the inflow of supplies, an alternative ground of the Board's jurisdiction, but it is clear that the broad and unqualified provisions in Section 2 (6) and (7) of the Act (*infra*, p. 11), afford no basis for speculation that Congress meant to withhold protection from interstate commerce of a substantial nature merely because it is conducted within a limited geographical area.

In the laundry and dry-cleaning industry, for example, the familiar hand laundry of former years had been largely replaced by mechanized establishments of considerable size engaged in power laundering and the cleaning and dyeing of garments.[6] The amount of interstate commerce to which these large servicing units give rise is suggested by the fact that during 1935, some 1,267 power laundries

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1940, 61 S. Ct. 447, 619; *Southern Colorado Power Co.* v. *National Labor Relations Board*, 111 F. (2d) 539, 543 (C. C. A. 10). There are no contrary decisions.

[6] During the year 1929 about 6,800 "power" laundries employed more than 233,000 persons and received a gross income in excess of $541,000,000, while over 5,000 cleaning and dyeing establishments employed some 60,000 persons and had receipts totaling over $201,000,000. U. S. Dept. of Commerce, Bureau of the Census; *Biennial Census: 1935, Power Laundries* (1937), p. 4, and *Cleaning and Dyeing Establishments, Rug Cleaning Establishments* (1937), p. 3; see, also, *The Power Laundry is a Major Industry*, in *Laundry Age* (April 1938), p. 54. The individual units of the industry are large, the average receipts per unit being almost

doing a business in excess of $128,000,000 operated in 23 metropolitan areas in the United States which comprise territory in more than one state.[7] Among both the employees and the employers there exists extensive organization into nation-wide associations [8] and trade unions.[9] Frequent and bitterly contested strikes, some interstate in scope,[10] have

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$80,000 in 1929 and 1,547 establishments reporting receipts in excess of $100,000 during that year. U. S. Department of Commerce, Bureau of the Census, *Census of Manufactures: 1929, Power Laundries, Dyeing and Cleaning Establishments* (1931), p. 10.

[7] U. S. Dept. of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), pp. 7–9; see *U. S. Dept. of Commerce of the United States, Metropolitan Districts, Population and Area, 1932*, pp. 10–13.

[8] 2,300 power laundries in the United States and Canada, handling 80 percent of the industry's entire volume, are members of the American Institute of Laundering. *Laundry Age*, October 1939, p. 3; *Laundry Age Yearbook*, 1938, p. 131.

[9] There are two national unions in the laundry industry, the Laundry Workers' International Union, affiliated with the American Federation of Labor, and the Laundry Workers Joint Board (Amalgamated Clothing Workers of America), affiliated with the Congress of Industrial Organizations. They have a combined membership of about 70,000 workers, almost one-third of all laundry employees. See *Laundry Workers' International Union in Convention*, Denver, Colorado, May 15, 1939; *Report of the Executive Council of the American Federation of Labor to the Sixteenth Annual Convention*, November 18, 1940, pp. 10, 19; and *Documentary History, Amalgamated Clothing Workers of America*, 1936–1938, p. 35; *id.*, 1938–1940, pp. 89–91.

[10] Of 12 interstate strikes in progress in October 1937, the laundry strike in the Cincinnati metropolitan area was the second largest. See U. S. Bureau of Labor Statistics,

given the industry a long history of industrial strife. There is no reason to suppose that Congress intended to permit a large and important portion of the nation's interstate trade to remain subject to interruption by the unfair labor practices which the Act proscribes.

3. Petitioner's claim (Pet. 9) that the decision below is inconsistent with interpretations of the Fair Labor Standards Act of 1938, Sec. 13 (a) (2)[11] overlooks the fact that Congress in that statute, in contrast to the National Labor Relations Act, expressly excluded a service organization the greater part of whose servicing is intrastate. Statutes containing no such exemption have been held to include even that portion of interstate commerce which is carried on wholly within areas of relatively small size.[12]

Monthly Labor Review, February 1938, p. 440. The laundry strike in the New York metropolitan area in September 1937 was the largest of 15 interstate strikes in progress at the time. See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, January 1938, p. 176; *N. Y. World Telegram*, September 13 and 14, 1937, and *New York Times*, September 15, 1937.

[11] Act of June 25, 1932, 52 Stat. 1060, 29 U. S. C., Supp. V, Sec. 213 (a) (2). That section provides that the wage-and-hour provisions of the statute shall not apply to "any employee engaged in any * * * service establishment the greater part of whose * * * servicing is in intrastate commerce; * * *."

[12] *Kansas City Ry.* v. *McAdow*, 240 U. S. 51 (Employers' Liability Act); *Spokane & Inland R. R.* v. *United States*, 241 U. S. 344 (Safety Appliance Act); *Ellis* v. *Inman, Poulsen & Co.*, 131 Fed. 182 (C. C. A. 9) (Sherman

4. The fact that state labor relations boards have in many states already assumed jurisdiction of laundries (Pet. 11–13) in no way indicates that there is any lack of federal jurisdiction nor that Congress did not intend fully to exercise it. *Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, 223–224.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1941.

Anti-Trust Act); *Fehr Baking Co.* v. *Bakers Union*, 20 F. Supp. 691 (W. D. La.) (Same); *In the Matter of Steubenville, Etc., Traction Co.*, 64 I. C. C. 517 (Interstate Commerce Act); *Board of Bristol, Tenn.* v. *V. & SW. Ry. Co.*, 15 I. C. C. 453 (Interstate Commerce Act).